



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 189 OF 2024

Pivalya @ Parmeshwar Balasaheb Patkal

....Petitioner

Versus

1. District Magistrate, Ahmednagar.
2. The State of Maharashtra.
3. The Superintendent, Nashik Central Prison,
Nashik.

....Respondents

....

Advocate for Petitioner : Mr. R.A. Jaiswal

APP for Respondents : Mr. V.K. Kotecha

...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 19 MARCH 2024

JUDGMENT (PER : SHAILESH P. BRAHME, J.) :

1. Rule. Rule is made returnable forthwith with the consent of the parties. Heard both the sides finally.
2. Petitioner is seeking quashment of order of detention dated 08.11.2023 passed by respondent no. 1 – District Magistrate, Ahmednagar, under Section 3 (1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates, Sand Smugglers and Persons

engaged in Black-marketing of Essential Commodities Act, 1981 (herein after referred to as 'MPDA Act' for the sake of brevity and convenience).

3. Respondent no. 1 – Detaining Authority has found that petitioner is a dangerous person in view of C.R. No. 418 of 2023 registered against him for the offences punishable under Sections 307, 353, 332, 333, 336, 143, 147, 148, 149, 427 of the Indian Penal Code and under Section 4/25 of the Arms Act, preventive action in Chapter Case No. 27 of 2021 under Section 110 (e) (g) of the Code of Criminal Procedure and two in-camera statements. Impugned order of detention was served on the petitioner on 08.11.2023. It was approved under Section 3 (3) of the MPDA Act, by respondent no. 2 – State Government on 16.11.2023. Meantime, the petitioner made representation on 13.11.2023 which is considered by the Advisory Board and on 24.01.2024 it recommended confirmation.

4. Learned counsel for the petitioner tenders on record written submissions along with judgments. He seeks to challenge impugned order on submissions formulated on following grounds :

- (i) Delay of six months in passing impugned order.
- (ii) Delay in approving impugned order under Section 3 (3) of the MPDA Act.
- (iii) Delay of 75 days in deciding representation.

(iv) Subjective Satisfaction is perverse, as order granting anticipatory bail is overlooked.

(v) Extraneous material has been considered by the Detaining Authority.

5. Learned APP supports impugned order on the basis of affidavit-in-reply. It is submitted that timeline prescribed under the MPDA Act, has been strictly adhered to by the Authorities. The Detaining Authority has arrived at subjective satisfaction which is plausible and reasonable. Learned APP vehemently submits that there is no delay as contended by the petitioner. It is submitted that no case is made to interfere with the impugned order by exercising extra ordinary jurisdiction.

6. We have considered submissions of both the sides. Solitary offence has been considered by the Authorities, though there are as many as six offences registered against the petitioner. Offence bearing C.R. No. 418 of 2023 is taken into account to initiate impugned action. It is a matter of record that he was granted pre-arrest bail by order dated 28.07.2023 in C.R. No. 418 of 2023. Respondent no. 1 – Detaining Authority has recorded in paragraph no. 6 of the impugned order that the petitioner was absconding in C.R. No. 418 of 2023. With these relevant facts, we propose to examine validity of the impugned order.

7. **Delay.**

Offence C.R. No. 418 of 2023 was registered against the petitioner on 15.05.2023. Affidavit-in-reply reveals that the confidential statements of the witnesses were recorded on 08.06.2023. The statements were verified by Sub-Divisional Police Officer on 14.06.2023. There is no explanation for the time consumed from 08.06.2023 to 14.06.2023. Thereafter, the report was submitted to respondent no. 1 on 09.09.2023 by Sub-Divisional Police Officer. This delay from 14.06.2023 to 09.09.2023 has also not been explained. Thereafter, proposal was forwarded to respondent no. 1 on 28.10.2023. It further travelled from Superintendent of Police to Police Inspector of concerned Police Station in reverse direction to rectify the mistakes. It was resubmitted to respondent no. 1 – Detaining Authority on 03.11.2023.

8. There is delay of more than five months from registration of offence till 08.11.2023. Intermittent delay as referred above remain unexplained. We find that there is lack of promptitude. When the respondents were taking action of preventive detention, they were expected to be diligent. Learned counsel for the petitioner has rightly relied upon following judgments to buttress that unexplained delay vitiates impugned action.

i. *Pradeep Nilkant Paturkar Versus S. Ramamurthi and others*, AIR 1994 SCC 656 ;

ii. *Digambar @ Digambar Vitthal Dagdade Versus The District Magistrate, Latur and others*, passed by this High Court in Criminal Writ Petition No. 1736 of 2023 ;

iii. *Nilesh Sunil Pendulkar Versus The District Magistrate, Latur and others*, passed by this High Court in Criminal Writ Petition No. 1820f of 2023.

9. We have considered relevant paragraphs of above judgments. We have already taken view in the matter of *Pradeep Nilkant Paturkar (supra)*, *Digambar Vitthal Dagdade (supra)* and *Nilesh Sunil Pendulkar (supra)* in the matters of delay. We propose to adopt the same view. We find substance in the submissions of the petitioner.

10. Impugned order was passed on 08.11.2023. Our attention is invited to paragraph no. 10 of affidavit-in-reply which states that the proposal was forwarded for approval under Section 3 (3) to the State Government on the same date. It was approved on 16.11.2023. If the proposal was forwarded on 08.11.2023 itself, there was no reason to approve it after about six days. Learned counsel is justified in submitting that there is delay which remains unexplained. This conduct of respondents is against law laid down in the following matters :

i. *Hetchin Haokip Versus State of Manipur and others*, **2018 ALL SCR (Cri.) 1240** ;

ii. *Dharani Raja Padyachi Versus State of Maharashtra and others*, **2019 CJ (Bom) 1658** ;

iii. *Aatish Ravindra Kharat Versus The State of Maharashtra and others*, passed by this High Court in Criminal Writ Petition No. 1794 of 2023.

11. Petitioner made representation on 13.11.2023. Relevant papers were placed before Advisory Board on 16.11.2023. An opinion was rendered on 13.12.2023. It was confirmed by the State Government on 24.01.2024. We again find that there is an unexplained delay in considering the representation. Both the affidavits filed by the respondents do not have explanation. The representation has not been considered with promptitude. We are of the considered view that impugned action is unsustainable in view of following judgments :

i. *Mahesh Kumar Chauhan Versus Union of India*, **(1990) CJ (SC) 377** ;

ii. *S. Amutha Versus The Government of Tamil Nadu and others*, **2022 LiveLaw (SC) 25** ;

iii. *Prakash Chandra Yadav @ Mungeri Yadav Versus The State of Jharkhand and others*, **2023 LiveLaw (SC) 529**.

12. **Subjective Satisfaction.**

We have already observed that a finding is recorded by the Detaining Authority that petitioner was absconding while considering

papers of C.R. No. 418 of 2023. In fact, petitioner was granted anticipatory bail by order dated 28.07.2023 in Criminal Bail Application No. 973 of 2023 in very same offence. This relevant material has not been considered by the Detaining Authority. Therefore, a perverse finding is recorded which reflects on subjective satisfaction. It is settled law that the orders of bail, orders of acquittal, papers of investigation are relevant inputs to be looked into by the Detaining Authority. We find substance in the submissions of the learned counsel in this regard. For that, we propose to reply upon following judgments :

- i. Rushikesh Tanaji Bhoite Versus State of Maharashtra and others, **2012 CJ (SC) 945** ;
- ii. *Digambar @ Digambar Vitthal Dagdade* (supra) ;
- iii. *Nilesh Sunil Pendulkar* (supra).

13. Our attention is invited to the judgment of acquittal passed in the matter of C.R. No. 9 of 2016 i.e. RCC No. 2 of 2017. It is tried to be submitted that the Detaining Authority refers to that offence as a pending matter, which is apparent mistake. It is true that acquittal was rendered way back on 06.03.2018. It pertained to old offence. It is extraneous to consider the order of acquittal. We are, therefore, not prepared to accept this submission of petitioner.

14. Learned counsel for the petitioner would refer to First Information Report in the last crime which is registered against 150 persons. Petitioner is shown to be accused no. 105 and offence is mainly of unlawful assembly and other offences. It does not attribute specific role to the petitioner. He is one amongst 150 persons involved in the offence. Amongst them, only petitioner is selected for drastic action under MPDA Act. We find that there is no convincing material against the petitioner to resort to drastic action under the MPDA Act. We are constrained to record that subjective satisfaction is not only perverse but arbitrary.

15. Learned counsel for the petitioner adverts our attention to interim order dated 29.01.2024 directing respondent no. 2 to decide application for temporary release of the petitioner preferred under Section 15, due to medical emergency of his wife. The grievance is that no endeavor is made to decide the application. This Court was required to intervene on 06.03.2024. Thereafter, application was rejected. We do not propose to comment upon the conduct of the respondents because this demeanor is post detention order. We have already dealt with the merits of the matter.

16. The upshot of above analysis, the impugned order is liable to be quashed.

OPERATIVE ORDER

- (i) The writ petition is allowed.
- (ii) The petitioner shall be set at liberty forthwith.
- (iii) The criminal writ petition is disposed of.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]